

## Calendar No. 163

116TH CONGRESS  
1ST SESSION**S. 2258**

To provide anti-retaliation protections for antitrust whistleblowers.

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## IN THE SENATE OF THE UNITED STATES

JULY 24, 2019

Mr. GRASSLEY (for himself, Mr. LEAHY, Mr. BLUMENTHAL, Ms. KLOBUCHAR, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. COONS, and Ms. WARREN) introduced the following bill; which was read the first time

JULY 25, 2019

Read the second time and placed on the calendar

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**A BILL**

To provide anti-retaliation protections for antitrust whistleblowers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Criminal Antitrust  
5       Anti-Retaliation Act of 2019”.

1 **SEC. 2. AMENDMENT TO ACPERA.**

2 The Antitrust Criminal Penalty Enhancement and  
3 Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1  
4 note) is amended by inserting after section 215 the fol-  
5 lowing:

6 **“SEC. 216. ANTI-RETALIATION PROTECTION FOR WHISTLE-**  
7 **BLOWERS.**

8 “(a) WHISTLEBLOWER PROTECTIONS FOR EMPLOY-  
9 EES, CONTRACTORS, SUBCONTRACTORS, AND AGENTS.—

10 “(1) IN GENERAL.—No employer may dis-  
11 charge, demote, suspend, threaten, harass, or in any  
12 other manner discriminate against a covered indi-  
13 vidual in the terms and conditions of employment of  
14 the covered individual because of any lawful act done  
15 by the covered individual—

16 “(A) to provide or cause to be provided to  
17 the Federal Government or a person with su-  
18 pervisory authority over the covered individual  
19 (or such other person working for the employer  
20 who has the authority to investigate, discover,  
21 or terminate misconduct) information relating  
22 to—

23 “(i) any violation of, or any act or  
24 omission the covered individual reasonably  
25 believes to be a violation of, the antitrust  
26 laws; or

1 “(ii) any violation of, or any act or  
2 omission the covered individual reasonably  
3 believes to be a violation of, another criminal law committed in conjunction with a  
4 potential violation of the antitrust laws or  
5 in conjunction with an investigation by the  
6 Department of Justice of a potential violation of the antitrust laws; or

7 “(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to—

8 “(i) any violation of, or any act or  
9 omission the covered individual reasonably  
10 believes to be a violation of, the antitrust  
11 laws; or

12 “(ii) any violation of, or any act or  
13 omission the covered individual reasonably  
14 believes to be a violation of, another criminal law committed in conjunction with a  
15 potential violation of the antitrust laws or  
16 in conjunction with an investigation by the  
17 Department of Justice of a potential violation of the antitrust laws.

“(2) LIMITATION ON PROTECTIONS.—Paragraph (1) shall not apply to any covered individual if—

“(A) the covered individual planned and initiated a violation or attempted violation of the antitrust laws;

“(B) the covered individual planned and initiated a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws; or

“(C) the covered individual planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.

“(3) DEFINITIONS.—In this section:

“(A) ANTITRUST LAWS.—The term ‘antitrust laws’ means section 1 or 3 of the Sherman Act (15 U.S.C. 1 and 3).

“(B) COVERED INDIVIDUAL.—The term ‘covered individual’ means an employee, contractor, subcontractor, or agent of an employer.

“(C) EMPLOYER.—The term ‘employer’ means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

1 “(D) FEDERAL GOVERNMENT.—The term  
2 ‘Federal Government’ means—

3 “(i) a Federal regulatory or law en-  
4 forcement agency; or

5 “(ii) any Member of Congress or com-  
6 mittee of Congress.

7 “(E) PERSON.—The term ‘person’ has the  
8 same meaning as in subsection (a) of the first  
9 section of the Clayton Act (15 U.S.C. 12(a)).

10 “(4) RULE OF CONSTRUCTION.—The term ‘vio-  
11 lation’, with respect to the antitrust laws, shall not  
12 be construed to include a civil violation of any law  
13 that is not also a criminal violation.

14 “(b) ENFORCEMENT ACTION.—

15 “(1) IN GENERAL.—A covered individual who  
16 alleges discharge or other discrimination by any em-  
17 ployer in violation of subsection (a) may seek relief  
18 under subsection (c) by—

19 “(A) filing a complaint with the Secretary  
20 of Labor; or

21 “(B) if the Secretary of Labor has not  
22 issued a final decision within 180 days of the  
23 filing of the complaint and there is no showing  
24 that such delay is due to the bad faith of the  
25 claimant, bringing an action at law or equity

1 for de novo review in the appropriate district  
2 court of the United States, which shall have ju-  
3 risdiction over such an action without regard to  
4 the amount in controversy.

5 “(2) PROCEDURE.—

6 “(A) IN GENERAL.—A complaint filed with  
7 the Secretary of Labor under paragraph (1)(A)  
8 shall be governed under the rules and proce-  
9 dures set forth in section 42121(b) of title 49,  
10 United States Code.

11 “(B) EXCEPTION.—Notification made  
12 under section 42121(b)(1) of title 49, United  
13 States Code, shall be made to any individual  
14 named in the complaint and to the employer.

15 “(C) BURDENS OF PROOF.—An action  
16 brought under paragraph (1)(B) shall be gov-  
17 erned by the legal burdens of proof set forth in  
18 section 42121(b) of title 49, United States  
19 Code.

20 “(D) STATUTE OF LIMITATIONS.—A com-  
21 plaint under paragraph (1)(A) shall be filed  
22 with the Secretary of Labor not later than 180  
23 days after the date on which the violation oc-  
24 curs.

1           “(E) CIVIL ACTIONS TO ENFORCE.—If a  
 2           person fails to comply with an order or prelimi-  
 3           nary order issued by the Secretary of Labor  
 4           pursuant to the procedures set forth in section  
 5           42121(b) of title 49, United States Code, the  
 6           Secretary of Labor or the person on whose be-  
 7           half the order was issued may bring a civil ac-  
 8           tion to enforce the order in the district court of  
 9           the United States for the judicial district in  
 10          which the violation occurred.

11          “(c) REMEDIES.—

12           “(1) IN GENERAL.—A covered individual pre-  
 13          vailing in any action under subsection (b)(1) shall be  
 14          entitled to all relief necessary to make the covered  
 15          individual whole.

16           “(2) COMPENSATORY DAMAGES.—Relief for any  
 17          action under paragraph (1) shall include—

18           “(A) reinstatement with the same seniority  
 19          status that the covered individual would have  
 20          had, but for the discrimination;

21           “(B) the amount of back pay, with inter-  
 22          est; and

23           “(C) compensation for any special damages  
 24          sustained as a result of the discrimination in-

1           cluding litigation costs, expert witness fees, and  
2           reasonable attorney’s fees.

3       “(d) RIGHTS RETAINED BY WHISTLEBLOWERS.—

4 Nothing in this section shall be deemed to diminish the  
5 rights, privileges, or remedies of any covered individual  
6 under any Federal or State law, or under any collective  
7 bargaining agreement.”.





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